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COUNSEL FOR THE DISFRANCHISED CORPORATORS
OF TRINITY CHURCH,

DELIVERED BEFORE THE

SELECT COMMITTEE OF THE SENATE,

MARCH 2, 1857.

REPORTED BY T. S. GILLETT.

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WEED, PARSONS & COMPANY.
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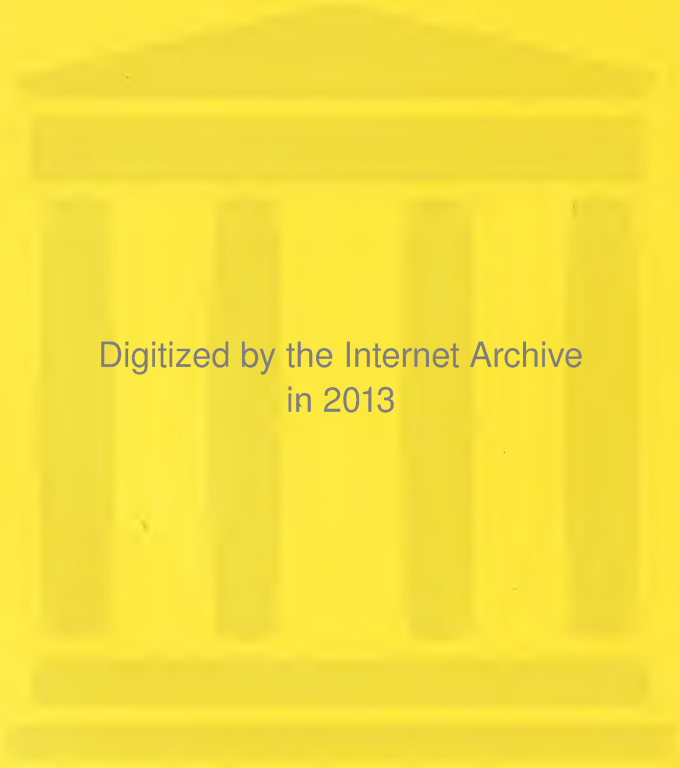

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After G. M. Ogden, Esq., and Hon. Amasa J. Parker, the counsel for Trinity Church, had concluded their arguments, Mr. Porter addressed the Committee in reply as follows:

In behalf of the great body of the Episcopalians of New-York, who for forty-two years have been precluded, by an act of legislative suspension, from the exercise of their corporate rights, I appear to ask that the barrier to the enjoyment of those rights may now be removed. If we were to rest our case upon a simple comparison of the second section of the act of 1814, with even those portions of the charter and subsequent grants, read by my learned friends in aid of the exclusive claims of Trinity, in the course of the able arguments which have just been closed, no room would be left for doubt that the claimants would still be in the undisturbed possession of their franchises, but for this act of legislative exclusion; an act procured on the application of Trinity Vestry in fraud of the beneficiaries of the trust, and operating as a great wrong, unintended indeed by the Legislature, but none the less unjust to those whose rights were shorn away, none the less disastrous to the interests of the church at large, none the less at war with the provisions of the State and Federal Constitutions.

But we do not rest our case here. We shall, in the course of the argument against the act of exclusion, refer to those material and controlling provisions of the successive grants, which our adversaries could not cite without exposing the fallacy of their entire argument. We find Trinity in possession of over five millions of property, which she claims to hold in her own right, and to the exclusion of the *cestuis que trust*, under the authority of the charter of 1697. Here is the charter. Let us recur to it for a moment at the threshold of the discussion. It invests a class of the inhabitants of the city of New-York with corporate rights. It creates a trust. It grants and confirms to

the trustees the property now known as Trinity church and churchyard. It makes the trust perpetual, and declares the uses to which the property shall be applied in all time to come. Who are the *grantees* designated in the charter? "The rector "and *inhabitants of our said city of New-Yorke*, in communion of "the Protestant church of England."* On what trust was the property granted? Read the declaration of uses. "The "same is hereby declared to be *forever* separated and dedicated "to the service of God, and to be applyed therein *to the use and* "*behalfe of the inhabitants from time to time inhabiting and to inhabit*, "*within our said city of New-Yorke*, in communion of our said "Protestant church of England as now established by our laws, "*and to no other use or purpose whatsoever.*"† These are the answers recorded in the charter under which she claims, by William of Orange, and his governor-general, to the present pretensions of Trinity.

The claim now made in her behalf is, that this charter, and the subsequent grants to the same uses, vested no rights in the Episcopal inhabitants of the city of New-York; that they were designed to create a close corporation, responsible neither to the church nor the government; that the trust was intended for the benefit of the *trustees*, and not of the *cestuis que trust*—of the vestry for the time being, and not of the corporators for all time to come; that the officers of Trinity can hold the property under the grant as their own, and repudiate the trust upon which it was granted; and that even if this were otherwise, though there is no warrant for a breach of trust in the charter itself, though the chartered rights of the corporators and beneficiaries were secure down to 1814, yet the Legislature then lent its sanction to the proposed fraud, and absolved the vestry of Trinity from the obligations previously imposed by contract, and declared by law. If this be so, the act of 1814 has remained too long upon the statute book. No man can believe that the Legislature would, with a full knowledge of the facts, have sanctioned a wrong like this. It would have been equally opposed to its sense of justice, and to its respect for constitutional

* Charter Book, page 8. † Charter Book, page 7.

rights. If the effect of the act of 1814 be what the counsel for Trinity claim, it should at once be repealed, or so amended as to restore the rights it divested.

Its practical operation has been to disfranchise over 7000 Episcopal communicants of the city of New-York; to deprive them of their rights as voters, beneficiaries and corporators, and to enable 92 qualified communicants, and 221 pew-holders of Trinity, to lay their hands upon a fund of more than five millions, and hold it, to the exclusion of their brethren, *though dedicated to the use of the whole* by the original charter, by the successive royal grants, by the colonial statute of 1704, and the state laws of 1784 and 1788. This is not all. Emboldened by success, the vestry of Trinity plant themselves upon the law of 1814, and tell you that the wrong is not *theirs*, but *yours*. Forgetting that you enacted it on their representations, they insist upon retaining the benefit, while they shift the burden of injustice from their shoulders to your own. They claim that *they* are not responsible because the act was yours; and that *you* have no power to repair the wrong, even if it was procured by fraud, and though it clove down the vested rights of thousands, against the terms of the charter and the plain mandate of the constitution.

The Vestry of Trinity go farther still. They hold themselves absolved by their character as trustees from all responsibility to the government, at the same time that they repudiate the trust as between themselves and the beneficiaries. They deny the right of the Legislature to investigate corporate abuses in matters of public concern, and defy your authority to make inquiry into official maladministration, though affecting the rights of over 7000 citizens, who seek redress for wrongs inflicted under color of legislative sanction.

You are told, in effect, by the learned counsel, as the Senate was previously told by Trinity Vestry, that you are intruders and intermeddlers; that the legislative supervision of the vested rights of over seven thousand of your citizens is a matter in which you have no concern; that the Senate should ascertain

the pleasure of the Vestry before it *presumes* to inquire into their official conduct and corporate management of a trust fund. But finding that the Legislature did not yield with becoming modesty to this cool rebuff, Trinity condescended in the end to return to the Senate what purported to be a response to its inquiries; suppressing, in part, the information demanded, and in part misleading the Senate by seeming answers and evasions. Trinity finally carried her condescension still farther, and, after finding that her suppression of the information required, did not deter the committee from ascertaining, by other evidence, the facts she chose to withhold, she came at length *of pure grace* before your body to testify in her own behalf, not, however, without again, through her counsel, administering her stern rebuke to the committee and the Senate for their presumption, and warning both of her severe displeasure if they finally failed to surrender in her behalf their legislative prerogative. The Vestry of this corporation have evidently been deluded into the belief that they are above the law and the constitution. They are mistaken. Under our form of government, corporate abuses, by which thousands of citizens are sufferers, are not beyond the reach of legislative *inquiry*. Wrongs persisted in, under color of unjust and unconstitutional laws, are not beyond the pale of legislative *relief*. As well might the other corporations of the state defy your authority to investigate their abuses. When has the bold claim been advanced by your insurance companies that they could exclude your committees of investigation? When has it been claimed in behalf of the banks, some of whose charters date far back toward the colonial times, that the officers, by statutory aid, could exclude the stockholders and usurp their property, without power on the part of the Legislature to undo its own wrong? The plea of Trinity Vestry to your jurisdiction, on the ground that they are absolved from allegiance to the government, is equally novel and groundless. They do not venture to stand upon it themselves. They *deny* your authority, but *recognize* it. Trinity church at last interposes her answer; and surely, when that august body condescends to testify in reply to questions propounded by the state govern-

ment, we may expect to learn the truth, the whole truth, and nothing but the truth.

Let us recur to the resolutions of the Senate—the first answer of Trinity—the supplemental answer with its apology for the provisions of the first, and its admissions of facts previously suppressed—and to that portion of the facts established by the other evidence which is undisputed by Trinity. I prefer to confine myself chiefly to that part of the evidence, as I had not, like my learned adversaries, the advantage of being present when the testimony was taken, but was first engaged in the case on the very eve of the argument. I am content to rest the issue mainly in regard to questions of fact involved, upon the reluctant testimony of Trinity herself, and the leading facts proved by other witnesses, which stand *entirely undisputed*—which my friends admit to be true, by failing to controvert them by evidence.

The Senate resolutions were adopted on the 13th of April, 1855. The first resolution required the vestry of Trinity church to report to the Senate, on or before the 7th of January, 1856, the number *and the names* of the persons entitled under the act of 1814 to vote at the annual elections of the corporation, specifying both communicants and pew-holders, and stating the names of all who *actually voted* at the last three preceding elections.

The 7th of January came, but no answer came from Trinity. At length on the 15th of February, 1856, a report was received from Comptroller Dunscomb, in which "the vestry "beg leave respectfully to *aver that they furnish the information* "*requested by the Senate.*"* The vestry were mistaken in their *averment.* They did *not* "furnish the information requested by the Senate." They stated "that the total number of the cor- "porators is 305, of whom 92 are communicants, and 213 are "pew-holders;"† and they suppressed *the names* of both, though specifically demanded in the resolutions prefixed to their report.‡ Was this suppression a mere blunder of the vestry, or was it a part of the intentional policy of concealment which

* Answer, page 3. †Answer, page 4. ‡ Answer, page 1.

has been adopted by this church under shelter of the act of 1814? Ten months afterwards, Trinity herself answers the question in her written communication to the committee, and by her own admission let her be judged. "In the report above "referred to, *this corporation designedly refrained from giving the "names.*"* Might she not, with entire propriety in the same report, have "*designedly refrained*" from begging leave respectfully to *aver* that she *furnished* the information requested by the Senate? The apology of Trinity in the supplemental report for the concealment of the names of the corporators, if it means anything, means this, for it is twofold: 1. That she intended to keep the names secret, from an apprehension that Episcopalians, who were *not* corporators, might learn the names of those who *were*, and appeal so strongly to their sense of justice, as to induce them *voluntarily* to surrender the control of a fund of five millions, and to recall the interdict against their excluded brethren. 2. That Trinity did not really suppose the Senate was serious in asking for the names, as *everybody knew* who the corporators were, and if the Senate did not, they might as well have asked any one else as the Vestry of the corporation. The names of those *who voted* at the last three preceding elections were also suppressed in the first report for reasons not disclosed, but still more cogent as the sequel proves.

The committee, at its session in New-York, on the 2d of December renewed in writing the demand for the names of the corporators; and finding that in the absence of information from Trinity, they were proceeding to ascertain the fact by other evidence, the Vestry, at length, on the 18th of December, reluctantly complied with the demand. If you could entertain doubt that *concealment, even of the names of her own corporators*, was a part of the settled policy of Trinity, after her disobedience of the original requisition of the Senate—after her subsequent delay in complying with the renewed demand—after her own admission in the last report, that the suppression was deliberate and designed—all doubt would be removed, by the re-

* Report, page 63.

maining uncontradicted evidence. One of the witnesses, *an assistant clergyman* for 18 years *in Trinity Church*, was unable, during all that period, by diligent exertion, to obtain access to the list of corporators. The *Rev. Dr. Wainwright* was equally unsuccessful, until his elevation to the bishopric. Mr. Wolfe for *ten years a vestryman* of Trinity, never saw the list, and proves that this was a privilege not accorded, even to the body of the Vestry. One of *the present vestrymen*, who has been six years in office, was favored, on a single occasion, with a sight of the list in the hands of the rector at an election, but whether before or since the adoption of the Senate resolutions does not appear. *One of the clergy of Trinity*, when seeking to obtain access to the list, found that it was in the *joint charge* of the rector and comptroller, showing that the secret was deemed of too great importance to be exposed, without the concurrence of the heads, both of the secular and the ecclesiastical departments. And even this concurrence seems to have been insufficient to warrant the revelation of the names of those whom Trinity recognized as entitled to vote; for when her comptroller was before the committee, under oath, he coupled his promise to disclose the secret with the condition, "*if the committee of the vestry authorize me.*" Who constituted that *committee* of secrecy, his evidence does not reveal.

But the Senate was obdurate; Trinity was astonished at your curiosity, and shocked at your presumption; she had "*designedly refrained*" from giving the names, but you would not refrain from examining her vestrymen; and at length she condescended to disclose the list of those *entitled* to vote for the custodians of this fund, and also the list of those who were *aware* of this right, and permitted to exercise it.

The second report musters from Trinity Church and her three chapels 305 names of corporators *entitled* to vote, by embracing in the list communicants and pew-holders, non-residents and residents, the living and the dead. Of these 304 corporators the return shows that 23 elected the vestry of 1850; 29

the vestry of 1852; 26 the vestry of 1854; and 32 the vestry of 1855. The *practical effect* of the new policy introduced by the act of 1814 is, that the vestry is elected and re-elected by less than one-tenth of the corporators of Trinity alone, and that of this one-tenth the 22 vestrymen themselves constitute a decisive and controlling majority.

The *second* report brings to light the fact established by the evidence beyond all controversy, that the vestry and comptroller knew so little of the corporators, as to certify to the Senate committee the dead of their own church, as pew-holders and electors of Trinity. It brings to light the memorable fact, that of nearly 8000 Episcopal communicants in the city of New-York, the original beneficiaries of the trust, Trinity, with the aid of all her chapels and churches, and with nine officiating clergymen, has been able to muster at most but 92 communicants qualified to vote even for a churchwarden. This is the share, on her own showing, which Trinity, with the aid of a fund of five millions, is able to exhibit, in the one hundred and sixtieth year of her existence, as her reapings from the harvest of the present generation, in a city numbering half a million of souls! When you find, on the production of the list of communicants, that she is compelled to resort to her nine clergymen and twenty-two vestrymen to swell the array to the meagre number of ninety-two, you will have no difficulty in understanding one of the reasons why she preferred to withhold the names, and not to take glory to herself over a net balance of sixty-one untitled and qualified communicants, making an average of less than sixteen for each of her magnificent churches and chapels in the metropolis of the western world. This number becomes still more significant, when we find, on reference to the reports of Trinity, that she has been compelled to expend, within the last few years, some $600,000, in the erection of princely palaces, to allure even the ninety-two to her sumptuous couches on the Sabbath Day, being at the rate of over six thousand dollars for each of her qualified communicants. And, while over half a million of the trust money dedicated by charter and by law, to

the use of all the Episcopal inhabitants of New-York, has been thus applied by Trinity Vestry to the purposes of costly and luxurious worship. The reports of the corporation, in conjunction with the other evidence, have developed the fact that, in four wards of that city, embracing over one-fifth of the entire population, there is not, even now, a church or chapel for the worship of God, according to the faith of Trinity. Such has been the result of the maladministration of this consecrated and noble fund, in a city more populous than either of the thirteen lesser states of the Union. Nay, the population of the *portion* of the city thus neglected by Trinity, with her trust fund of five millions, exceeds the number of inhabitants returned at the last census for either of the four smaller states, or for all the territories in the aggregate. If this property had been properly administered—if it had been applied to the use of the beneficiaries at large, Trinity would indeed have been, what her eloquent advocate (Judge Parker) has imagined her to be—an "*Alma Mater.*" Episcopal churches would have sprung up in every ward of that noble city, where the rich and the poor would have been welcomed together to the ministrations of a common altar.

Another aspect of the case has been brought to view by the reports of the Vestry and the facts disclosed by the witnesses. While over 7000 Episcopal inhabitants of the city of New-York have been excluded and disfranchised by Trinity, under color of the act of 1814, she now, in an official report, in violation even of the terms of that act, recognizes and returns to the Senate, *as corporators and electors*, those who are neither communicants of the churches or chapels of Trinity, nor inhabitants of the city of New-York. We have here another explanation of the reluctance of the corporation to disclose to the Senate the names of the present corporators.

But the policy of concealment and exclusion has been still more strikingly developed in the course of this investigation. The claim put forth by Trinity is, that while the act of 1814 disfranchised the great body of the corporators, it left the rights

of its own particular communicants and pew-holders unimpaired, and secured *them at least* against encroachment. Yet, in violation of that act, even upon her construction, we find her engaged in a systematic effort to disfranchise the corporators and pew-holders, even in her own chapels. You have the proof before you of the subterfurge of 1S55; you have in evidence the leases to her pew-holders, in which she clips three days from the yearly term, for the purpose of depriving the lessees of their right to vote. She annexes to the leases, as a part of the contract, a schedule of regulations, providing for the same clipping process in the renewals. Lest this should not suffice to defeat the act of 1S14, and disfranchise her own pew-holders, she adds the further clause, that "the above agreement, or the "occupation of a seat, *does not give to any person the right and* "*privilege of a corporator.*"* But the counsel say this was only intended for the then current year. They are in error. The regulations appended to the leases provide for *renewals* on the same terms of disfranchisement. But the counsel say that Trinity intended to disfranchise them at most for only two years. Here also they are in error. The body of the leases contains the receipt in advance for the first year, commencing in April, 1S55, and annexed are the printed receipts of the Comptroller in blank, for similar advance payments in the three ensuing years, each year clipped in the same way, so that at each annual election, between Easter day and the first Sunday after Easter, the pew-holders should cease to be corporators until the election was closed, though declared to be corporators and voters even by the act of 1S14. But the learned counsel claims that Trinity afterwards repented and rescinded this anomalous regulation. True; but she neither repented nor rescinded until *after* the Senate adopted the resolutions of investigation, and demanded from her the *names* of those entitled to vote at her elections. Then repentance was prudence. Then it became her interest to swell the number of her corporators.

But this policy of systematic disfranchisement and exclusion even of her own congregation was no novelty of 1S55. A fact

* Report, page 32.

is disclosed on this subject which is not remembered, indeed, by the rector of Trinity, but which others have not forgotten. A gentleman of high character, for ten years prior to 1848 a leading Vestryman of the corporation, testifies to the mode in which elections were then conducted by the officers of Trinity, in disregard of the rights of the corporators, as declared even by the law of 1814. "In *addition* to the requirements of the law, "they required that *all persons desiring to vote should give previous* "*written notice of such desire to the rector.* I *objected* to that require- "ment when a Vestryman. I considered it an obstacle to voting "—contrary to law."* What became of the vestryman you can readily imagine. In the pithy phrase of the witness, he "*was omitted*" at the next election. What became of the *rule* we do not know, for Trinity is a close corporation. It may have shared the fate of another, which is tersely given in the testimony of one of the assistant ministers of Trinity: "There was an *ordinance* of the vestry, *interfering*, *in some respects*, *with the privilege of voting* in Trinity chapel for a time, which was *subsequently* rescinded."†

Though Trinity so long eluded your inquiries, you have been enabled to arrive at some leading and controlling facts. How many more have been sheltered from your view by this policy of close concealment must remain matter of mere conjecture. It is enough to know that her own Clergy and Vestry were not permitted to learn who were the corporators and electors, and that under cover of the law of 1814 matters were so managed in the secret councils of Trinity that in 1854 only 26 men voted for the 22 vestrymen who were to control a charity fund of over $5,000,000; one of them, Comptroller Dunscomb, who would not give you, on oath, the names of the corporators, unless the *Committee* of the vestry would consent to his revealing the secret; one of them, Vestryman Skidmore, *of the standing committee*, who refused even to be sworn when you required it, though ready and willing at the call of Trinity; not to speak of the other vestrymen, who were of course im-

* Report, page 113. † Report, page 83.

partial judges of their own merits, and amiably voted to continue each other in office.

There was pith and point in the inquiry of the Senate, Whom do you recognize as corporators, under the legislative act of 1814? Who are *entitled* to vote for your vestrymen? Who elect them *in fact*? Trinity declines to answer. She respects you personally, but defies your authority. She will give you *numbers*. She cannot indulge you with *names*. You were not impressed with a suitable feeling of reverence and submission. You quietly put her Comptroller and her Vestrymen under the rude constraint of an oath, and Trinity concluded that if she must either answer on oath, or without oath, she preferred to waive the oath. She made her supplemental report. In this, the *names* returned correspond with the *number* previously returned. It so happens, unfortunately, that the number of corporators is verified even by her only by embracing non-residents, and exhuming the dead. But of the 305 voters *in name*, who are the voters *in fact?* Who voted in 1854 and 1855, the two years preceding this investigation? Twenty-six in 1854. Thirty-two in 1855. The Vestry, themselves, in each case, were the majority of the whole. Is it strange that they were *re-elected?* So much is disclosed. How much more is probably undisclosed? The policy inaugurated in 1814 is fully ripe, and these are its fruits. Until that time every churchman in New-York was both a corporator and a beneficiary. Now, the church repudiates the trust. The vestry are at once the corporators and the corporation, the electors and the elected.

The Senate, in its *second* resolution, required Trinity to report, among other things, the amount expended by her within the five preceding years in building, or assisting to build "*free churches in the destitute portions of the parish*," with the names of such churches, and the amount expended upon each. The question admitted of no evasion. The answer may be anticipated. She had expended *nothing*. There was no such church to name. But she had done what was better far — she had built, at an expense of about a quarter of a million, another magnifi-

cent chapel, *not free* indeed, but more convenient than Trinity church for the accommodation of up-town millionaires, and eminently useful in diminishing the wear and tear of carriages belonging to wealthy corporators on the way to church upon the Sabbath day.

The *third* resolution required the vestry to report "what appropriations have been made by them during the last three years *to institutions of charity, benevolence and learning* in the city of New-York." You find the answer at page 17 of the first report of the vestry—*not one dollar.* To these institutions Trinity has tendered decent burial, and that is all. To Christ Church—I do not know under which of the three heads she proposes to classify it, whether as "an institution of charity, benevolence or learning"—to Christ church she has given a "plot *to be selected*" in a graveyard. To the society for the relief of Aged and Indigent Females she has bountifully set apart, in her spacious cemetery, 300 square feet to bury them in. For the inmates of "the Orphan's Home" she has made gracious provision, that even these poor children may have Christian graves, in a plot *to be selected*, of which those unfortunates will of course have the full benefit, if they take the precaution, before death, to bargain with a hearseman to drive their bodies a mile and a half beyond Manhattanville. The warm heart of Trinity yearns toward these noble "institutions of charity, benevolence and learning;" but her sympathies are stronger, her care is more provident for the dead than the living, for the corpse than the soul.

The *fourth* resolution required the Vestry to report "*the esti-*" *mated value* of each lot and parcel of land owned by the said "corporation in the city of New-York, *irrespective* of the leases "thereon." You will find the answer of Trinity, in her first report to the Senate, at the foot of the sixth page, in these words: "The Senate will perceive that *the whole present value of the landed estate of Trinity church is* $1,446,371.71." What was *the truth*, as since ascertained by the most clear and conclusive

evidence? The *actual value* was $5,874,023.00.* The apology of Trinity is, that though she did not tell the Senate the truth, she did not tell it a deliberate falsehood. After the valuation in the first report was proved to be untrue, and after the Senate committee made a renewed demand in writing for the "*real value*" of the property, Trinity, in her second communication, told the Senate that she made the first statement, "expecting "it to receive *such credit, and such credit only,* to which it might "be justly entitled."† She coolly assumed that the Senate did not know what it was inquiring for, and that when it asked the Vestry for the value, what it really meant was merely to send them on an errand to find out what the assessors thought it should be taxed for, as between the city and the tenants. But the second demand of the committee left no room for this evasion. The question must be answered, or some other mode devised to elude the inquiry. Trinity was equal to the emergency. Her second answer is before you: "The vestry are *unable to agree* upon any estimate of *their own.*" They had no difficulty in agreeing upon the under valuation of third parties, but they could not possibly agree upon their own valuation. Did they try? When before did the Vestry disagree, since vestryman Wolfe objected to the rule excluding the communicants of Trinity from voting, unless they gave previous notice in writing to the rector that they *intended* to exercise their legal rights? If they were unable to agree, why not select a competent man to make the valuation? In a Vestry, having the control of over five millions, would they have us believe that they had not a single man of sufficient capacity to estimate the value of their own real estate? They do not even sign their own reports. Comptroller Dunscomb answers in their names. Could they not trust him to estimate the property in his charge? Would the comptroller have had any difficulty in agreeing with himself? They admit, in the *second* answer, that they *understood* the question of the Senate, when they interposed the *first* You asked for the value and not for assessors' estimates. If they did not design to answer, why did they profess to do so?

* Report, page 12. † Report, page 67.

Why return what was confessedly an under valuation? The obvious design was to evade—the obvious effect to mislead. Did they not leave you to infer that they had given what you demanded—the true value of the property? But while they fail to answer what you ask, they volunteer what you did not ask. You inquired as to *gross* value. They profess to return *net* value. You called for the value, *irrespective* of the leases. They make a deduction from the value on account of the leases, as if they were really worth nothing, though Trinity holds and owns them, as if the rents received were no consideration for the tenants' occupancy. They profess to give you the value of all their property, real and personal. They claim to have involved the corporation in debt to the amount of $648.913. The following is their own language, which you will find at page 7 of the report of the vestry to the Senate:

"Thus the *whole* productive estate of Trinity church *is cor-*
"*rectly stated* as follows:

"Real estate,.....	$1,446,371 71
"Bonds and mortgages,.....	199,469 41
"Cash in bank at the end of the last financial	
"year,.....	19,399 46
	$1,665,240 58
"Deducting the debt,.....	648,913 00
"Shows *the whole net value* to be.....	$1,016,327 58"

What did they mean the Senate should understand from *these distinct and unqualified averments?* Did they make this statement, if I may borrow a peculiar phrase from their second report, "expecting it to receive such credit, and such "credit only, to which it might justly be entitled?"* To what credit *was* it justly entitled? The fact is established, by clear and uncontradicted evidence, that the net value of their property, making the precise deductions claimed in their report, is in fact $5,221,293,47.† The Senate was left to suppose the

* Report, page 97. † Report, page 12.

amount to be only $1,016,327.58. The actual amount is over five times the sum returned by Trinity. There was a trifling error in their report to the Senate of $4,204,965.89; and this in giving a simple answer to a plain question addressed to a corporation by the state government! The statement was not made in haste. Trinity took nine months to deliberate upon the question and to prepare her answer. We are willing to concede, if the corporate officers prefer it, that this blunder of four millions was not falsely intended, but was merely an attempt at evasion. The attempt was futile. The truth is at length disclosed. The fact is proved, and no longer open either to denial or concealment—that after making the deduction, not only of her whole indebtedness, but of the value of her leases as returned by her to the Senate, she has a property in her possession of over five millions in net value.

The next attempt is to evade the force of the fact. Trinity asks your leave to restate the account. She claims now that she did not deduct enough. And on what pretext? Why, that the amount which she returned to the Senate, as the value of the unexpired leases, is not the true value! If not, why did she so return it? If not, why does she not disprove its truth? Here, at least, she cannot invoke the old pretext of taxable valuation. The assessors never estimated the value of these terms. *It was her own valuation.* Her counsel ask you now to swell the deduction from a million and a quarter to two millions and a half. Have the leases doubled in value in ten months? On the contrary, they diminish precisely as they advance toward expiration. On what pretext can Trinity claim that, in her former return, she placed a *false valuation* upon these leases? She adduces no reason for distrusting, in this respect, the truth of her own reports. You will at once perceive the absurdity of the claim, by putting the proposed additional deduction side with the whole net value of the property as stated in her former return. The additional deduction exceeds the entire estate as before returned, and would leave Trinity bankrupt to the extent of some $200,000. The attempt

to escape from her own written statements, without proof of their falsity, is futile and unavailing.

How, then, does Trinity explain her return to the Senate of "*the whole net value*" of the property as $1,016,327.58, when the actual net value was $5,221,293.47? My learned friends tell us the error was undesigned. Doubtless it was a mistake. But was it not one of those mistakes which are apt to occur in close corporations? It was the error of secrecy and evasion. In any view, it was a gross mistake. Take two or three illustrations from the many disclosed by the evidence. No attempt is made to explain or excuse the strange fact that in her report to the Senate she stated the value of lot No. 275 Greenwich-street, at only $6840.40, when she had already sold it a few days before at $20,000. Equally significant is the fact that she returned the value of the Chambers-street lots at only $28,827.40, when but a few weeks before, in the course of a business contract with the Hudson River Railroad Company, she fixed the value at $100,000. Still more gross is the error which occurs in returning to the Senate the value of the two lots in Hudson-street as only $1964.44, for which, a few weeks after, she exacted and received the sum of $20,000. These illustrations are sufficient, without further pursuing the evidence, to show the frankness with which Trinity dealt with the Senate in answer to the fourth resolution. Her excuse is, that she did not intend to falsify; she merely intended to evade.

But though Trinity is slow to answer, in her reports, the questions asked, she is a swift witness in her own behalf as to matters in regard to which the Legislature made no inquiry. She lauds herself for her munificence. She is lost in admiration of her own boundless charity. This opened to the Senate a broad field of inquiry. The counsel complain that they were not permitted to pursue this branch of the investigation *alone*. The incautious challenge of Trinity has led to strange developments. Of these, it is for you and not for me to speak. I was not present when the evidence was taken, though I believe I understand its effect. It will be for you to state in your report

the convictions it must have forced upon your minds in regard to those branches of the investigation in which Trinity indiscreetly led the way.

Thus far I have dealt only with the leading and undisputed facts which illustrate the *practical effects* of the encroachment upon the rights of the original corporators and beneficiaries, under color of the act of exclusion procured in 1814 by the vestry of Trinity from the State Legislature. Until that scheme was devised, the corporation was faithful to its trust. From that period its policy changed. It is only another illustration of the lesson taught by the history of all human governments, that when irresponsible power is conferred even on great and good men, it does not tend to make either great men greater or good men better.

The act of exclusion made Trinity irresponsible, and gave her dominion over the Protestant Episcopal church. From that time her policy was reversed. Before 1814 she gave 299 lots for pious uses; in the next twenty-two years she gave *nineteen;* in the last twenty years *none*, except five plots in her cemetery, in which to bury the dead, who are beyond the reach of charity. Her wealth has multiplied, and her endowments are at an end. Before 1814, the rising churches of New-York claimed and received from the trust fund such aid as they required, as matter of undisputed right. Since then, Trinity has treated them as beggars asking for charity. To some, with grudging bounty, she gave annual stipends, terminable at pleasure and dependent on good behavior. Before 1814, she applied the fund to the purposes of the trust. Since then, she has turned broker on her own account. She borrows and lends—making her debt a pretext for refusing to give, and claiming her loans as charities; taking mortgages for donations—mortgages on the independence of the churches and the altars of her faith; boasting of her munificence, concealing her resources, and rebuking her sister churches as importunate beggars; turning her heel upon some and permitting them to perish because they were poor; smiling graciously upon others

which were orthodox and rich; lavishing $600,000 of trust money in erecting gorgeous cathedrals for millionaires; and leaving, without a place of worship for her episcopal brethren, a portion of New-York, embracing a greater number of inhabitants than the aggregate population of all the cities above her upon the Hudson, Troy and Albany included.

What has been the practical effect of the new policy of Trinity, under color of the act of 1814, on her *financial* prosperity? If you could rely upon her own testimony you would be compelled to say that her real estate, which, even if stripped of the buildings, would, upon the undisputed proof, sell to-day, at the merchants' exchange for over five millions, is, *in her hands*, worth less than a million and a half. She now asks you to make a deduction of a million and a quarter more, on the ground that she has impoverished herself by leasing her property, and yet the proof discloses the fact that she persists in thus impoverishing herself by renewing these leases as fast as they expire. She keeps herself in debt. She keeps her sister churches in debt, and loads them down with mortgages. With five millions of net proporty she pays over $45,000 a year as interest money, to find an excuse for meeting, with rude rebuffs, the applications for relief by the feebler churches of her own faith. How this ample fund has been mismanaged is disclosed in the evidence of General Dix, an able advocate, but an unfortunate witness for the Vestry he represents. He testifies, in effect, though not in terms, that under the present management of Trinity this vast property has become *literally a sinking fund;* that though he found "the financial condition of the corporation," when he became a Vestryman, in 1849, "*very unsatisfactory*," it has been growing worse ever since; that in each of the last ten years she has improvidently permitted her expenditures to exceed her income by sums varying from $9226.94 to $51,368.46; and that the aggregate of the deficits in the last ten years alone is $273,597.25. How long this trust fund will be able to endure the present policy of depletion, this system of shriveled revenue and swollen expenditure, the Committee can judge by

reference to the statement of General Dix. Take, for instance, the first year of the decade embraced in his table. "Reve- "nue $68,498.47—expenditure $94,791.93—deficit $26,293.46." With a revenue of only $68,000 we can understand why Trinity should be willing to lead the Senate to suppose that the principal was but little over a million of dollars. But when we find the net principal to be $5,221,293.47, and the income less than $69,000, we may well inquire how it is that under the new policy of 1814, a property, which, properly managed, would yield, even at *five* per cent, an annual income of over $260,000, yields, in the hands of Trinity Vestry, but a fraction over *one* per cent a year.

When we find that the new policy, adopted under color of the act of 1814, has been so disastrous to the objects of the trust and to the *financial* interests of the corporation, we are met by the argument that it has at least promoted the *spiritual* welfare of Trinity. We will not judge her as unkindly as she judges those I have the honor to represent, when she denounces them through her counsel as "*Reverend persecutors*" and "*Covetous and rapacious laymen.*" We rest the case upon *her own testimony*, as to the effect of this unfortunate policy upon the religious interests of the church. She tells us that in her four magnificent cathedrals, in the most populous city on the continent, with the aid of her nine clergymen and her numerous vestrymen and churchwardens, and embracing them in the number, she has succeeded in gathering, in all, aside from women and children, only ninety-two communicants as her qualified quota of the 8000 Episcopalians of New-York.

If the new policy of Trinity, under the act of exclusion, has been fatal alike to her own secular and religious prosperity, do we find any countervailing advantage to the public at large, to reconcile us to the continuance of the exclusion? On this question there is no controversy. It is not denied that the peculiar system of Trinity in the management of her leasehold property overhangs the city of New-York like an incubus; keeping the occupants dependent upon the favor, caprice and

exactions of a close corporation; deteriorating the value of adjoining property, and clogging the general progress of local improvement. But there is a greater interest involved. The prosperity of every great religious denomination is a part of the riches and glory of the commonwealth. If this trust fund was restored to the Episcopal corporators at large, if its management was again open to public scrutiny, if its income was applied to the pious uses for which it was designed, how much would it contribute to the cause of benevolence and charity, of good morals and religion, of private happiness and public prosperity!

Are *these* objects unworthy of legislation—unworthy of the attention of lawgivers and statesmen? The disfranchised corporators appeal to the Senate, not for favors but for justice. They are corporators by the original charter of 1697, by the colonial charter of 1704, by the royal grant of 1705, by the recognition of Queen Anne, in 1714, by the renewed legislative charter of 1784, by the subsequent state law of 1788. Their rights were *unquestioned* until 1812. They were *unimpaired* until 1814. The corporators were then divested of their franchises by a mere act of legislative will, on the application of the trustees to exclude the beneficiaries of the trust. The exclusion was without their consent and without cause. Resistance was made, but it was unavailing. By the *rule* of exclusion adopted by Trinity in 1812, she had, for the time, acquired the control both of the vestry and the fund. The corporators were numerous, but they were without concert, and they were at home. Trinity was a unit, and she was at the capitol. In Col. Troup, she had an agent of consummate tact, great ability and indomitable will, a worthy predecessor of the present agent of Trinity, who honors the committee with his presence. The work was to be done, and he did it. The majority of the Council of Revision were against approving the law. He neutralized that majority. As the act was neither approved nor rejected, it took effect at the next session under the then existing rule. From that time to this, no excluded corporator could vote, ex-

cept by violating, at his peril, a public statute of the state. From that time to this, the churchmen of New-York have steadily asserted their right, protested against the exclusion, and refused to acquiesce in this flagrant wrong. The Legislature, by the act of 1814, had erected an imposing barrier between them and the courts, by declaring that they were not corporators. The contest of an individual in the courts, with the wealth, the influence and the power of Trinity, and with this law to give to her a color of right, would be life-long and ruinous, even if successful. Hopeless as it seemed, two attempts were made to induce the Legislature to investigate the facts and to repair the wrong. But Trinity was here, and laughed the efforts of the corporators to scorn. At length, confident in her strength, overweening in her pride, she presumed so boldly upon public forbearance, that she has finally subjected herself to a scrutiny which she cannot bear, and cannot escape. She has heaped indignities upon those she has wronged, until she has roused the indignation of the Episcopalians of New-York, of the laity at large, of the public authorities and the people of the state. The clergy had long felt and complained of the wrong; but in secular affairs, the clergy are for the most part powerless. But the laity became aroused, and determined to make a renewed effort to reclaim their rights, and reinstate the corporators in the enjoyment of their franchises. Eminent, philanthropic and distinguished citizens felt it due to themselves and to the church, that an appeal be made to the justice of the state.

What are the pretexts of Trinity for resisting this appeal? That she has persisted in the wrong for forty-two years against all remonstrances; that she has hitherto defeated all efforts to repair it, and, therefore, it should endure forever; that the clause of exclusion in the act of 1814 was constitutional, though it clove down vested rights; that even if unconstitutional in 1814, it has grown constitutional by growing old; that though it was unconstitutional to enact it, it would be unconstitutional to repeal it; that the Legislature of 1814, by passing an unconstitutional act, lifted Trinity not only above the law,

but above the constitution. She certifies to you her own virtue and purity and charity. She warns you against the body of the church, save her own communicants, pew-holders and proteges, as *avaricious, rapacious and greedy for plunder.* She charges eminent clergymen with being "malignant traducers," on oath; and Episcopal laymen of New-York, outside of her congregation, with being "covetous of spoil," "a lawless mob," unfit even to vote within the walls of Trinity for the trustees of a religious fund. She publicly denounces and maligns gentlemen of her own faith, who, individually, from their private fortunes, have contributed more liberally for the cause of religion and charity, than Trinity with her five millions; men of unsullied honor, who scorn injustice and aim only at the prosperity of the church, which the policy of this corporation overhangs like a nightmare. Men like these are charged in your presence, by the representatives of Trinity, with a scheme of "church robbery," and a design to seize and divide her millions of "trust property." She alternately remembers and forgets that it *is* trust property. Who ever proposed to divide it? Neither the claimants of redress nor the witnesses in their behalf, neither clergyman nor layman within the limits of the diocese. No honest man in the state ever dreamed of such a division. Trinity loves false issues. We cannot gratify her by accepting them.

The question, and the only question is, who shall elect the Vestry, the trustees of the fund? To whom shall they be responsible for the administration of the trust? Shall they elect and re-elect themselves, as they did in '54, as they did in '55? Or shall they be elected by and responsible to the beneficiaries of the trust? The Episcopalians of New-York wish a Vestry who will not divide, but preserve the fund, who will permit the property to augment with the growing wealth of New-York; who will bring up the annual revenue in just proportion to the capital; who will sacredly apply the income, and the whole income, to the service of the church, and to charitable and pious uses; who will apply it impartially, without reference to high church or low church, without favoritism to the rich or

cold rebuffs to the feeble, without incurring debt as a pretext for refusing to give, or loading churches with mortgages for charitable donations.

These ends were *defeated* by an act of legislative disfranchisement, excluding the corporators at large, on the petition of Trinity Vestry. They can be *accomplished* by simply removing the legislative ban, and restoring to the corporators their chartered rights, secured by six government grants. While Trinity controls the electors, she controls the elected. All we ask is to restore the constituency. She can perpetuate her disastrous policy only by the continued exclusion of the corporators at large. She can be a close corporation no longer, when her Vestry become responsible again to the Episcopal inhabitants of New-York. To this extent, and to this extent alone, have Trinity and her Vestry ground for apprehension from the restoration to the corporators of their vested rights. But when they profess to fear that the Episcopal communicants would prove a lawless mob, if permitted to deposit their ballots for the trustees of a religious fund, they do gross injustice to the character of the churchmen of New-York. When they profess to fear that a board of Vestrymen, representing the Episcopal communicants at large, will force some obnoxious rector on Trinity when a vacancy occurs, we need only to say they do not know their brethren. When they profess to apprehend that a Vestry, elected by the whole Episcopal body, will feel less interest than they *in the prosperity of the country churches*, we can only say that the assumption is unjust and revolting. A Vestry so elected, will be willing and able by a wiser management of the fund, to contribute to the aid of the country churches tenfold the amount now doled out by Trinity; and this, without converting donations into money changers' loans, by taking mortgages for charities.

But Trinity professes to be in terror, lest a Vestry representing the Episcopalians of the city at large might prove unfaithful to the trust. She forgets that from 1697 down to 1812 the trust was faithfully administered by a Vestry representing the whole

Episcopal body; and that from the adoption of the rule of exclusion and the policy of a close corporation, the administration of the trust has been a signal failure. Both modes have been tried, and the advantage of the former is not matter of speculation, but of history. The Vestry representing the general body was tried and found faithful. The Vestry representing Trinity corporation alone has been tried and found wanting. I cannot consent to be as uncharitable to the gentlemen composing either at this or any former period the Vestry and officers of Trinity, as my learned friends have been toward the Episcopal body I have the honor to represent. I assume and believe them, each and all, to be upright, honorable and christian men. I am not here to question either their motives or intentions. They may denounce us at their pleasure. My friend, the junior counsel of Trinity (Mr. Ogden), threatened to be severe, and he redeemed his pledge. We have made no such threats, and have no such pledges to redeem. We shall not denounce them in return. We feel no inclination to retaliate, and would not be willing to do them injustice. Our controversy is not with them, but with the corporation which withholds from us our just rights, and with the unfortunate policy which has so seriously impaired the growth and expansion of the Protestant Episcopal church. The individual officers of Trinity, as well as her clergy, doubtless are, and have been, gentlemen of personal integrity. But we claim that they have, in their collective action and their corporate character, greatly erred as to the nature of their trust, and the true policy of the corporation. They are worthy men, but they are representative men. As a class they probably sincerely believe that it will be better for the present and succeeding generations, that in the city of New-York Trinity should be permitted to act as the general almoner, and with that view she should continue to absorb the wealth, the power, the very life-blood of the church. But whatever may be the prospect for the future, there is no longer room for controversy as to the past. From 1814 to 1856 the administration of Trinity, as her warmest friends concede, has been a miserable failure. From the date of the act of exclusion her course has been steadily downward. The remedy is obvious. Repair the wrong. Let

the Legislature restore to the corporators at large the rights it divested on the petition of the Vestry of Trinity.

The matters developed in the course of this investigation leave no room for doubt that the law of 1814, so far as it was *an act of confiscation and disfranchisement*, was unconstitutional and void. It excluded corporators from their chartered rights without their consent, thus directly impairing the obligation of contracts in violation of the federal constitution, and depriving citizens of their property and franchises without due process of law in violation of the state constitution. It was an act of naked judicial legislation, and not only assumed to pass judgment upon the rights of private citizens who had no opportunity to be heard, but pronounced a judgment directly at war with their rights as declared by the deeds of trust, and guaranteed by previous laws.

The idea of restitution Trinity utterly abhors. She interposes her high authority and sternly vetoes a repeal of the law. The Senate is refractory. She then lowers her lofty tone and sends three learned, astute and able lawyers to entangle you in the net of forms. Sharp in legal casuistry, she pus forth her seven pleas in defence of the wrong she seeks to uphold. Stripped of needless verbiage, these are her allegations: 1. That the corporators at large had no rights even before the act of exclusion: 2. That they had already forfeited them: 3. That they were, at all events, lawfully despoiled by the act of 1814, for the corporation consented to rob them though the corporators did not consent to be robbed: 4. That the Legislature has power to enact an unconstitutional law, but no power to repeal it: 5. That the act, though unconstitutional when adopted, has since become constitutional: 6. That the omission of the Assembly committee, on a former occasion, to recommend its repeal, has deprived the Legislature of the power of repeal: 7. That the Legislature is barred from doing justice by some unwritten statute of limitations, if the wrong to be redressed has for twenty years eluded the power of the government. These are the grave pleas by which the Vestry seek to uphold this act of confiscation and exclusion.

The first issue presented is, whether the beneficiaries of the trust were the Episcopalians of the city of New-York or only the congregation of Trinity. We prove, by six government grants, that all the Episcopal inhabitants were beneficiaries, voters and corporators, and we show that their rights were never questioned until the Vestry sprung upon them the rule of exclusion and the act of 1814. Each of the successive *titles* of the corporation recognized the Episcopal inhabitants of the city as corporators down to 1814; and accordingly one of the objects of that act was *to change the name*, so that it should not remain as a living rebuke to the proposed scheme of spoliation. Let me call your attention to the several grants. In the original charter of 1697 the grantees were designated as "the said Rector and Inhabitants of *our said city* of New-York in communion of the Protestant Church of England." In the colonial act of 1704 they were designated as "the Rector and Inhabitants of *the city of New-York*, in communion of the Church of England." The designation was the same, *verbatim*, in the Queen's grant of 1705, and in the royal act of recognition and confirmation in 1714. In the act of 1784 they are recognized by the State Legislature as "the Rector and Inhabitants *of the city of New-York*, in communion"—not of Trinity Church, but "of the Church of England." In 1788 the Legislature again unmistakably designated the beneficiaries, by changing the title to "the Rector and Inhabitants of the city of New-York in communion of *the Protestant Episcopal Church in the State of New-York*." But when Trinity contrived the scheme of disfranchising and excluding the Episcopal inhabitants of the city at large, it was necessary to change names as well as things, and at her particular request she was rebaptised by the Legislature of 1814, in the new name of "the Rector, Churchwardens and Vestrymen *of Trinity Church*, in the city of New-York." My learned friends claim that the title given to the corporators is not *conclusive* evidence that the persons described were intended as the beneficiaries. True, but they will not deny that the title furnishes strong *presumptive* evidence in favor of those so designated, when we find that in all the successive changes of name down to 1814, in a period of 117 years, the

Episcopal inhabitants of the city were thus denoted as corporators; and especially when we find Trinity so restive under it, that she repudiated the name, at the same time that she repudiated the corporators.

But we have higher and more controlling evidence. Whether we look to the donees of the grants, or to the express terms of the successive trusts, we find the rights of the corporators at large declared in language which none can mistake. Let me again ask your attention to the charter which called this corporation into existence. The donees are "the Rector and inhabitants," &c. But my friends say this is the mere corporate name. Then I refer them to the *declaration of uses*. There we find, after a specification of all the then property of the corporation and the confirmation of the title, these memorable words, which must be expunged from the charter before Trinity can lawfully exclude her Episcopal brethren: "And the same is "hereby declared to be *forever* separated and dedecated to the "service of God, and to be applyed therein to the use and be-"halfe"—Of whom? Of the congregation of Trinity church? No. Of the corporation aggregate? No. Of "the Rector "and inhabitants, &c?" No. "Of the *inhabitants* from time to "time *inhabiting and to inhabit*"—Where? Within Trinity Parish? No. "Within *our said city of New-Yorke* in com-"munion" Of Trinity? Oh, no. "Of our said *Protestant* "*Church of England*, as now established by our laws, and to *no* "*other use or purpose whatever*." Every Episcopal inhabitant of the city of New-York, from that day to this, comes within the very words of the declaration of trust. The act of 1704 ratifies the former grant and confirms it to "*the uses aforesaid*." Here again we find the same broad distinction between the corporation and the corporators, the donees and the beneficiaries. The act designates the corporation as "*the Rector* and inhabi-"tants of the city of New-York in communion of the Church of "England;" and after referring to the uses and trusts attached to the property, it proceeds in the sixth section to declare who thereafter, in each Easter week forever, shall be *entitled to vote* for its officers. And in whom does it invest that right? In

the pew-holders and communicants of Trinity, like the confiscation act of 1814? No, but in "*the inhabitants aforesaid*" of the city of New-York, in communion of the Church of England. This act, though superseded afterwards by the law of 1784, furnishes the highest historic evidence of the rights of the Episcopal corporators at large. We find the same rights recognized, and the same uses confirmed in Queen Anne's grant of 1705, and in the royal recognition of 1714. Thus far the evidence of the clear right of the whole Episcopal body in the city of New-York is overwhelming.

We come now to the new charter of the corporation granted by the state government in the act of 1784. That act, it will be remembered, was passed after the storms of the revolution had rolled away, and when the new government was engaged in remoulding its institutions and laws, with a view to the preservation of vested rights and the shaping of our future policy. It was passed before the adoption of the federal constitution, and when the limitations upon the power of the Legislature, under our then state constitution, were so slight that it might almost be said to be endued with the omnipotence of Parliament. Our adversaries admit this law to be constitutional, and when they make that admission their whole case is gone. Even if we had failed to show the antecedent rights of the corporators, if Trinity could blot out all these older records, we could take our stand on the law of 1784, and rest the claims of the Episcopalians of New-York upon this as a sure foundation. The purposes of the act appear upon its face. It was designed to adapt the charter to the new condition of things; to declare the severance of the connection between the corporators and the established church of England; to bring them in connection with the Protestant Episcopal church of the State of New-York; to save the property of the corporation for the purposes of the original trust, and to declare and secure, for all time to come, the rights of the corporators and beneficiaries in this noble property, dedicated by charter and by law to the use of the Episcopal inhabitants of New-York.

Accordingly the first section repeals so much of the charter as authorized the corporation to make levies from year to year on all the inhabitants of the city of New-York for the support of the Episcopal form of worship; substituting, according to our republican theory, the principle of voluntary contribution for coercive support by the taxpayers. The third section was passed to settle a mooted question, as to the effect under the charter, of the severance of the colonies from the crown, in regard to the declaration of trust in favor of all the inhabitants of the city of New-York in communion with the church of *England*. It was claimed by some that, notwitstanding the revolution, the inhabitants must continue their connection with the English church or forfeit their rights as beneficiaries under the charter. The better opinion was that the former relation of the corporators to that ecclesiastical body was merged in their present relation to the Protestant Episcopal church of the State of New-York, and that their connection with the latter preserved all the rights as corporators and beneficiaries to which they had previously been entitled as communicants of the mother church. It will be perceived by reference to the second section, that it was not a question between two Episcopal churches in New-York. There was then but one church of that denomination in the entire city. The only question was, whether the corporators, to retain their rights, must be communicants of the English church or of the Episcopal church of the State of New-York. The third section accordingly declared that "*all* persons professing themselves members of the *Episco-*" *pal church*," &c., "being inhabitants of the city of New-York, "shall be entitled to all the rights, privileges, benefits and "emoluments which, in and by the said charter and law first "above mentioned, *are designed to be secured to the inhabitants of* "*the city of New-York in communion of the Church of England.*"

This provision vested with the rights of corporators and electors every person embraced in its clear, broad and comprehensive terms. When the federal constitution took effect, in 1789, it attached to those rights and guaranteed them against encroachment forever. Yet there are now over 7000 Episco-

palians in New-York who are excluded from the enjoyment of franchises thus secured, under color of the law of 1814. How then shall Trinity continue to lock out these corporators? for a close corporation never willingly opens its doors. There stands the law of 1784, declaring those rights inviolable which she has persisted in violating for forty-two years. You have seen how she meets that law in the course of this investigation. She deals with it gently and gingerly. We all know that Trinity is a capital reader. She reads the act of exclusion admirably, but when she gets back to the act of 1784 her eyesight fails. Even when you call her attention to the very section which affirms the rights of those whom she excludes, she reads but cannot comprehend. Forced at length to understand, one last resort remained, a poor quibble, which melts away at the touch. She is not quite certain, in looking at the third section of the act of 1784, but the legislature, when they declared the rights of *all* the inhabitants of the city "professing themselves *members of the Episcopal Church*," &c., may have really meant only to declare the rights of *some* persons "professing themselves members of the (*Trinity*) church." She is not sure that the words *Episcopal Church* denote a great religious denomination; for aught she knows the legislature may have had in view merely a tall building which stands like a sentinel overlooking the princely money-changers of Wall-street. She rather thinks that when the legislature declared that these were chartered rights "de-" signed to be secured to *the inhabitants of the city of New-York* "in communion with the Church of *England*," they meant to say they were secured only to some of those inhabitants *in communion with a particular building* on the west side of Broadway. To see that this is but a feeble quibble, which cannot stand alone, we need only look to the act itself. The question to be settled was, to which church these corporators should recognize allegiance, the Church of England or the Episcopal Church of the State of New-York? The words "Church of England" and "Episcopal Church" are used in the section as correlative terms. They are used not to describe two buildings but to designate religious bodies and religious forms under two

political governments, once united, now divorced. But why need I discuss this idle issue? If you will turn to the last clause of the fifth section of this very act of 1784, you will find the legislature itself declaring in what sense they used these words in the act: "The Episcopal Church, or *that mode* "*of worship* commonly called the Church of England." Nay, Trinity and the legislature *both agreed* as to the import of the words, when the one presented and the other granted the petition to change the corporate name, by the act of 1788, to "the Rector and Inhabitants of the city of New-York *in com-* "*munion, of the Protestant Episcopal Church in the State of New-York,*" instead of the Church of England. Even in that memorable resolution adopted by Trinity Vestry on the 28th of March, 1812, when they first dared to deny the rights of their own corporators, they used the words "Episcopal Church" in the same manner as the legislature did in the act of '84, as embracing *all* Episcopalians; but to accomplish their object superadded the bold condition in violation of the act of 1784, that the corporators nevertheless should not be permitted to vote, unless they were *also* pew-holders or communicants of Trinity.

You will remember that the Vestry do not even pretend to sustain the exclusion on any authority other than the act of 1814 and the original charter. As the act of 1814 could not lawfully divest pre-existing rights of the corporators, they are driven to fall back on the charter of 1697. And when they get to the charter they are met by the overwhelming facts, that the Episcopal inhabitants of the city, then and thereafter, were designated in the title as corporators, were in terms donees of the property, and were expressly stated to be beneficiaries of the trust in the declaration of uses. They are thus driven to the absurd proposition that though all these inhabitants were made corporators, donees and beneficiaries, in express terms, by the charter, yet this was not the *design* of those who granted it. The argument to support this proposition is, that as there was then but one parish in the city, you are at liberty to expunge the word *city* wherever it occurs in the charter, and write the word *parish* in its place, so that it will read "inhabitants of

Trinity parish," &c. When you have so altered the document they say you will find that the *design* was to make the parishioners of Trinity the sole beneficiaries; and that thus Trinity may alter her parish at pleasure, and thereby cut off her corporators by simply reducing her imaginary limits. All this is very beautiful in theory, but the difficulty of Trinity is that she cannot change the words of the charter. The rights are secured to the Episcopal inhabitants of the *city*, not of Trinity parish, and it makes no difference, so far as their claim is concerned, whether in 1697 there was one parish or twenty in New-York, nor whether there were five thousand, or fifteen thousand inhabitants. But this pretence of Trinity, like the others, is annihilated by the act of 1788. That act *states* the *design* of the original charter, and disposes of the whole question, in a clause of the third section previously read for another purpose. Referring to the rights, privileges, benefits and emoluments of the corporators and beneficiaries, it declares that all these, "in and by *the said charter* and law first above mentioned, are *designed* to be secured to the inhabitants *of the city of New-York*, in communion of the Church of England." Thus, so far as relates to the chartered rights of all the Episcopal Inhabitants of the city, the act of 1784, which both sides admit to be constitutional, puts an end to all debate. On these chartered rights, as defined and confirmed by the act of '84, we take our stand.

But Trinity tells us that though these were our rights in 1784, we must prove that we did not forfeit them by non-user previous to the adoption of the rule of exclusion by the Vestry of 1812. The proposition is utterly unsound in law. Forfeiture is never presumed. It is to be proved by the party alleging it, not to be disproved by the party whose rights are invaded. If Trinity alleges a forfeiture, she holds the *onus*, and must establish it by clear and affirmative proof. Her claim is, that so long as she interposed no impediment to the enjoyment of their rights by the Episcopal corporators, if they omitted for twenty years to vote, they waived and forfeited the right to vote forever. Aside from the legal absurdity of the proposition, it is utterly untrue in fact. There is not a scintilla of

evidence that any corporator ever omitted to vote for twenty years prior to the act of 1814, or the exclusion rule of 1812. A feeble attempt was made to sustain this allegation by the evidence of Dr. Berrien and Mr. Verplank, but their testimony discloses the fact, that neither of them was even connected with the parish until 1811; that they had no knowledge who did or did not vote previous to that time; that there was no record of the corporators previous to that date; that so far as they were aware, no list had been kept of those who had voted at previous elections, and if there was any such list in existence, they had not even been at the trouble to examine it. They both admit that they never knew the right of any Episcopal voter to be questioned until 1812, and then only on the occasion of an exciting election. Then, for the first time, the Vestry denied the right, and adopted, in defiance of the law of 1784, that bold rule of exclusion, upon which even they dared not rest, until they had beset the Legislature, and procured the confiscation act of 1814. Thus the pretence of *non-user*, by the corporators for twenty years prior to 1814, is utterly exploded. Failing in establishing the forfeiture by her witnesses, Trinity next proposes to prove the fact by her own impartial evidence. She insists that she made a like pretence in her petition to the Legislature in 1814, and therefore it must be true. I think she does herself no injustice in claiming that she made the same unfounded pretence then, though it was in language so cautious and guarded, and so qualified by the antecedent matter and the ambiguous phrases used, that it was evidently intended to elude the prompt denial to which it might have been exposed if it had been made openly and unblushingly. But does Trinity suppose that she commends the law of 1814 to greater favor, by showing that it was obtained by covert and groundless pretences? Above all, does she mean to claim that what she said for the purpose of excluding her corporators, is to be taken as evidence against the corporators she thus excluded? She did not send her petition to them. She placed it quietly on the legislative files, and ninety-nine one hundredths of the corporators first heard of the petition, when the act of exclusion fell upon them like a blow from the

headsman's axe. But we see in another respect how idle is the pretence that the Episcopalians, in communion with churches other than Trinity, had forfeited their rights by *twenty years' non-user* prior to 1814. Only *sixteen* years had then elapsed since the first church of that denomination, other than Trinity, was reared in the city of New-York. You will remember that my friend (Mr. Ogden), at once Vestryman and counsel of Trinity, at the close of an argument worthy of his honored father, limits even his own claim in her behalf to the period "since "1798, the time of *the first establishment* of another church." By what process does Trinity propose to establish a forfeiture against the communicants of other Episcopal churches, by a twenty years' *non-user*, when they had existed but for sixteen years?

But this entire theory of *the forfeiture of a statutory right to vote*, by any omission to vote, whether for one or fifty years, is utterly illusory and unfounded. It is a doctrine which never did and never could receive the sanction of my eloquent friend, (Judge Parker), on the bench of the Supreme Court which he so eminently and so long adorned. He suggests, indeed, for your consideration, the views entertained on this subject by Trinity, but I do not understand him, even as her advocate, to argue the extraordinary proposition that an unlimited statutory grant of the right to vote can be forfeited by omission to exercise it. The elective franchise is, in all cases, *a privilege*. The right to vote involves the right *not* to vote. If it were otherwise it would cease to be a privilege. It is in the very nature of the right, that the elector may exercise it without incurring penalties; may omit to exercise it without incurring forfeitures. As well might it be claimed that the great body of the Society of Friends in the State of Pennsylvania, by omitting to vote at the elections prior to that of President Harrison, had forfetted their rights as electors. As well might Trinity claim that the rest of her few remaining corporators have forfeited their rights as churchmen by permitting the Vestry to do their voting, and to reëlect themselves, year after year, prior to the present investigation. It is a new doctrine, first put

forth by Trinity. *Non-user* of the elective franchise never disfranchised an elector who, by statute, was entitled to vote. The pretence of forfeiture by the Episcopalians of New-York, is untrue in fact and unfounded in law.

[The hour having arrived for the evening meeting of the Senate, the committee adjourned its session to the following day, when Mr. PORTER resumed his argument.]

Since the adjournment my attention has been called to two of the scurrilous pamphlets circulated during your session by those acting in behalf of Trinity; in one of which the author, anonymous, but not unknown, does not content himself with maligning the committee of the Senate, but assumes to argue a question of law which I have omitted to consider. Since Trinity is of opinion that it is worthy of an answer, I will defer to her judgment, and refer to it at this time before resuming the general argument. The topic was alluded to by Judge Parker, but so little stress was laid upon it that I supposed he regarded it as I did, as one of those trivial make-weights sometimes introduced in aid of discussion, but scarcely worthy of serious consideration. The pretence in this pamphlet is that the original charter was not intended, *as it declares*, for "*all* the inhabitants "from time to time inhabiting and to inhabit in our said city of "New-Yorke, and in communion of our aforesaid Protestant "Church of England," but only for so many of these as the Ves- "try should choose to *select* from the whole body of beneficiaries. You will see, on referring to the charter, that after expressly declaring that *all* the Episcopalians inhabiting the city, or thereafter to inhabit it, should be beneficiaries of the trust, it proceeds to confer power on the corporators to admit *other* Episcopalians, though *not* inhabitants of the city of New-York; and this Trinity pamphleteer gravely infers that because the corporation were empowered, if they so desired, to admit Episcopalians *not* residing in the city, it follows that they were at liberty, in direct violation of the trust, to exclude *resident* Episcopalians from their chartered rights. The clause on which—dissevered from the antecedent matter—this clerical logician

relies, even when thus dissevered, falsifies his deduction. It will be found at page 14 of the charter book. "And we do of "our like speciall grace, certaine knowledge and meer motion "give and grant unto the said Rector and *inhabitants of our city of* "*New-Yorke* in communion, &c., full power and authority" (among other things) "to choose, nominate and appoint *so many* "*others* of our liege people as they shall think fitt, and shall be "*willing to accept* the same to be members of the said church and "corporation and body politicque." To choose, nominate and appoint *so many others!* others than whom? others than *inhabitants of the city of New-York*, in communion, &c. This charter was granted in colonial times. There were English churchmen on the civil list and the army list, who would be temporarily in New-York from time to time in the discharge of their duties, or from other causes, though not inhabitants of the city, and it was intended to leave it *optional* with the corporation to admit these and other non-residents, if they desired, though not embraced within the general terms of the charter. The *donees* were "the Rector and Inhabitants in communion," &c. The *beneficiaries* were all the *Inhabitants* in communion, &c., and to these grantees was given the *further* right to admit *others*, *not* inhabitants in communion, &c. And when any pamphleteer, stipendiary of Trinity or otherwise, undertakes to distort a clause like this into an authority to exclude the Episcopal Inhabitants of New-York, he proves his own weakness, and maims the cause of which he assumes to be a champion. It would be better if he had come to the field with his visor down. So much in justice to the committee, whom this anonymous worthy so loftily rebukes for the independent discharge of a public duty under the authority of the Senate. Let us return to the main discussion.

The act of 1814, as our adversaries claim and as we admit, assumed, either rightfully or wrongfully, to exclude and disfranchise all the Episcopal inhabitants of the city of New-York, except the little groups of communicants and pew-holders, whom Trinity was so reluctant to name. We have shown that the parties so excluded had been secured, both by the charter and

the act of 1784, in the perpetual enjoyment of their rights. This disposes of the first plea of Trinity. We have shown that the pretence, that previous to 1814 these rights had been forfeited by twenty years' non-user, is worse than frivolous; and the second plea shares the fate of the first. The third plea of Trinity is one equally unfortunate. We all agree that the act of 1814 was unconstitutional, if it divested chartered rights without *the consent of those whose rights were divested.* Whose rights did it assume to divest? If those of the *corporation aggregate*, the only consent required was that of the corporation aggregate, as represented by the Vestry and other corporate officers, and without such consent the law would be unconstitutional. If the rights divested were those of *individual corporators*, whether few or many, their individual consent was necessary, and without such consent the law was unconstitutional. Trinity resorts to her usual policy of evasion. She coolly assumes that it was *her* rights that the Legislature took away, and therefore her consent is to be deemed the consent of the corporators. This would be true in a limited sense, if the Legislature had taken her rights or her property, and these alone. But the rights divested in this case were not those of the *corporation*, but those of the *corporators.* The chartered right of an Episcopal communicant to vote at the annual elections, was the right not of the corporation, but of the communicant. The act of 1814 took away *the right to vote* for Vestrymen, a right which the *corporation* could not exercise, never possessed before, and could neither lose nor acquire under the law of 1814. The law disfranchised the corporators, not the corporation. Again, *the rights of property divested* by this act were not those of the corporation. The Legislature took nothing from Trinity church. *It merely confiscated the rights of the corporators in the trust fund.* The right of the corporator to *his interest* in the corporation is not the property of the corporation. It is the right of the corporator as *against* the corporation. The interest of the *trustee* is entirely distinct from the interest of the *cestui que trust.* Trinity is a subtile casuist; but will she convince the Senate that when a trustee asks leave of

the Legislature to rob his ward and pocket the fund for his own benefit, this will operate as a consent by the ward to the robbery? You own stock in the Bank of Commerce. According to the logic of Trinity, your stock belongs not to you, but to the bank. And when the ethics of Trinity shall have pervaded Wall-street, and the board of directors petition the Legislature to confiscate the stock of all the corporators but themselves, and leave them in undisturbed possession of the whole as their own, you will require higher authority than that of two churchwardens and twenty Vestrymen to satisfy you that the consent of those who betray a trust binds those who are to be plundered by the betrayal. The act of 1814, passed on the petition of Trinity Vestry, assumed to take from each Episcopal inhabitant of New-York, unless he belonged to that particular congregation, his franchise as an elector, and to confiscate his interest as a corporator and beneficiary in the trust property, though both were vested rights, and though he had consented to part with neither.

The proposition that the Vestry were alone concerned in the question whether they might be permitted to despoil the corporators, finds no sanction in the decisions of the state and federal courts on these high questions of constitutional law. In the Bowdoin College case, reported in 1 Sumner, 314, Judge Story takes occasion to rebuke this false idea that a board of officers can, by their concurrence, legalize a wrong to the corporators and the public at large. "If the acquiescence of the Boards could "be construed into an approval of the act, as I think it ought "not to be, still *that approval cannot give effect to an unconstitu-* "*tional act.* The legislature and the board *are not the only parties* "*in interest* upon such constitutional questions. The people "have a deep and vested interest in maintaining all the consti- "tutional limitations upon the exercise of legislative power, and "no private arrangements between such parties can supersede "them." In the case reported in 9 Watts and Sergeant, 27, the Supreme Court of Pennsylvania go much farther in defence of vested rights than is necessary for my purpose. They hold that the officers for the time being are precluded from surren-

dering, not merely the rights of the corporators, but even the rights of the corporation aggregate; that "the franchises and "corporate rights of a company, and the means vested in them "which are necessary to the maintenance of the object for "which they were created, are *incapable of being granted away*, "*even by the company itself.*" In a memorable case decided by our own Court of Appeals as late as 1852, that learned tribunal made a decision, disposing in principle of the very question on which we and our adversaries are at issue in respect to the law of 1814. In that case *Trustees* under a will had *petitioned* the legislature for leave to alienate the trust property professedly for the benefit, but without the actual consent of all the *cestuis que trust.* The legislature in 1837 passed a law authorizing the trustees to make the alienation; but the court of last resort unanimously held the law to be an unconstitutional invasion of the vested rights of the beneficiaries. In the opinion reported in 2 Selden, 367, the broad principle is announced, that "if the legislature should "pass an act to take private property for a purpose not of a "public nature; as if it should provide through certain forms "to be observed to take the property of one, and *give* it, or "which is the same thing in principle, to *sell* it to another, or "if it should *vacate* a grant of property, under the pretext of "some public use, such cases would be gross abuses of the "discretion of the legislature, and fraudulent attacks on private "rights, and *the law would clearly be unconstitutional and void.*" In the course of the same opinion the Court of Appeals expresses its entire concurrence in the language of the Supreme Court of the United States; "we know of *no* case in which a legislative "act to transfer the property of A. to B., without *his* consent, "has ever been held a constitutional exercise of power in any "State in the Union" My learned friend seemed in the course of his argument to suppose he would escape the force of this rule of constitutional protection, if he could show that the corporators, though *entitled* to the rights divested by the law of 1814, had not been in their actual possession. He failed in his proof of the fact. But if the fact had existed, and he had proved it, it would be of no avail. Here, too, he would have been confronted by a still later decision of the court of

last resort, reported in 2 Kernan, 208, where it is held that the rule of protection from encroachment, applies equally to rights in actual possession, and to rights secured by law, but not yet reduced to possession. The court say, "they are both equally "vested rights. The one is a vested right to obtain the thing, "with a certainty of obtaining it by resorting to the necessary "proceedings, unless there be a legal defence, and the other is a "vested right to the thing after it has been obtained." The favorite idea of Trinity that *her* consent to the spoliation of her corporators legalizes the spoliation is utterly at war with the decision of the Supreme Court in the case of Corning vs. Greene, which was recently announced in another room of the capitol; where Judge Wright, in the course of one of those masterly opinions which have given him so distinguished a reputation as a jurist, diccusses the policy of an analogous constitutional restraint for the protection of private rights. I read from page 29 of the printed opinion of the court: "The con- "stitutional provision does not except bills passed *on condition* "*that the corporation shall consent*, but applies universally to every "bill altering a body politic or corporation. The object of the "provision was not merely to secure corporations from legisla- "tive attacks, but also to protect the *corporators* and the *public*, "and it would be rendered comparatively useless by excepting "cases where those *who wield the corporate power for the time being* "consent." Profoundly impressed as we all are with reverence for the legal opinions of Trinity, even she will excuse us for not deferring to them when they are directly at war with those not only of our own Supreme Court and Court of Appeals, but with those of the Supreme Court of the United States.

Even aside from these considerations, no American statesman, lawyer or jurist could entertain a doubt, in view of the facts to which your attention has been called in the course of this investigation, that the act of 1814 was unconstitutional *as an act of judicial legislation.* We do not deny the right and duty of the Legislature in proper cases *to confirm pre-existing rights.* Beyond all doubt, the Legislature would in this instance, if they had been frankly informed by Trinity of the facts as they

actually existed, have confirmed the rights secured to the corporators at large by the original charter, and reaffirmed by the act of 1784. But Trinity stated only what suited the purposes she had in view. She referred to the antecedent grants, but in such terms as could not fail to mislead, and to divert the Legislature, the Attorney-General and the Council of Revision from the true character of the questions at issue.

But the law in question was not one of confirmation; it was simply one of confiscation and exclusion. If it was, as we allege, an act of judicial legislation, I do not understand our adversaries to claim that it could be upheld as constitutional. Whatever doubts prevailed on that subject in 1814, the question has since been finally settled both in the State and the Federal courts. Is there any room for controversy as to the *fact* that it was an act of judicial legislation? Was it anything else than a decision on the petition of Trinity that she might disfranchise her own corporators? It purported upon its face to be not a confirmation of pre-existing rights, but an act to *remove doubts as to what those rights were*, as you will perceive by reference to the recital in the law itself. The petition of Trinity, which you will find at page 31 of the Charter Book, requested the legislature to obviate and settle by a judicial law "*doubts* respecting the "persons *entitled to vote* for churchwardens and vestrymen;" and the petition admits that these doubts were so grave in their character that it had "become essential to the peace and "harmony of the church," that they should be adjudged without a trial by judicial legislation. Dr. Berrian, the Rector of Trinity, admits that Col. Troup, then a Vestryman and member of the committee of seven, represented Trinity at Albany in 1813 and 1814, "with *full power* to make application to the "legislature;" and in the letter of Col. Troup to the Council of Revision to induce them to waive their objections to the law as unconstitutional, he urges the necessity of judicial legislation *to settle controverted rights;* as you will see by reference to that document at pages 14 and 69. In view of these facts it is vain to deny that the second section of the act of 1814 was a judgment in a law suit, by a body without jurisdiction, pronounced on

the petition of Trinity, on her own unsworn and *ex parte testimony*, against some thousands of citizens, without even the form of legal process.

In every aspect, then, the law of 1814 was unconstitutional. as impairing the obligation of contracts, as divesting vested rights, as an act of confiscation and disfranchisement, as an act of judicial legislation. We are next met with the pretext that the constitutionality of the act was never questioned until now. Unfounded as this pretext is, abandoned as it is even by the counsel who represent Trinity here, the reiteration of the statement, in the publications she issues with such fecundity, seems to demand a reference to a few historical facts. The petition of Trinity was presented to the Senate on the 17th of March, 1813. The same day a bill was introduced and passed to a second reading. On the 20th it was engrossed, and on the 25th it passed, nine of the Senators refusing, even then, to sanction it by their votes. The Assembly referred it on the 30th of March, considered it on the 31st, and passed it two days afterwards, nearly one-third of the house voting against the bill. (Charter Book, pp. 36, 37.) But I need not remind you how it was hurried through both houses; how objections to its injustice, when suggested by members, were borne down by the strange pretence that the Episcopalians of New-York were anxious to be disfranchised; how attention was diverted from the material issues by the omission, in the petition of Trinity, of all allusion to these portions of the various grants which designated the corporators and declared their chartered rights; how investigation was eluded by formally sending to the Attorney-General, on the afternoon of one day, a book which Trinity had printed for his benefit, and on the following day smothering discussion by introducing his off-hand opinion, given in haste, and after hearing but one side. It is enough to allude to subsequent facts. The law went to the council of revision for approval. *That approval it never received.* Even upon the showing of Trinity, without the advantage of hearing both sides, without the aid of those material and controlling facts which have now been disclosed in the course of this inves-

tigation, *without even recurring to the declaration of uses in the charter*, Chancellor Lansing interposed objections to the passage of the law, from which he could only be induced to recede by the adroit expedient of Colonel Troup, the agent of Trinity. He published, for the benefit of the council of revision, one of those extraordinary pamphlets to which Trinity so uniformly resorts as approved weapons of guerilla warfare. It served, with Chancellor Lansing, the purpose of the author. And now, when the strange misstatements of that pamphlet, and its still more strange suppressions are exposed, Trinity seeks to repudiate him as her agent until she is confronted by the oath of her own Rector, swearing to the authority of Colonel Troup as her vestryman, her committeeman, and her representative at Albany. Failing in this, she claims that his representations and promises are not binding upon her because the pamphlet was not published until he had piloted the law through the two houses. But the printed statements of Colonel Troup are strong presumptive evidence of the character of the previous unprinted statements by which the Legislature were misled. At all events, even Trinity concedes that the rejection of the law was averted, and its final passage secured as an unapproved law, by the pamphlet she now seeks to disclaim. Chancellor Lansing yielded, and carried with him, for the time, the votes of Judges Kent and Van Ness. But the other three members of the council of revision did not yield even to the subtle plausibilities and smooth diplomacy of the agent of Trinity. Two eminent Judges of the Supreme Court united with Governor Tompkins in condemning the law as unconstitutional even upon Colonel Troup's own showing. But the pamphlet had done its work. It had produced a tie vote (*a*). It saved the bill from prompt and ignominious condemnation. It enabled it to creep into the statute book without either approval or rejection. But Trinity claims too much when she invokes the authority of even half that council in favor of the law. The fact is now disclosed, in the evidence of a distinguished layman, himself an intimate friend of Chancellor Kent, that this great jurist, though voting

(*a*) Charter Book, pp. 34, 35.

for the law on the representations of Colonel Troup, subsequently investigated the question and arrived at the clear and undoubting conclusion that the law was unconstitutional. What was the final conclusion of Judge Van Ness we have no means of knowing. But one thing is established beyond all controversy, that of the six members of the council of revision, Chancellor Lansing has left on record his written condemnation of the law as evidence of his own deliberate judgment upon the face of the act itself; Judge Yates pronounced it unconstitutional and voted with Daniel D.Tompkins and Ambrose Spencer for its unconditional rejection; and to their high authority Chancellor Kent afterwards added the weight of a still greater name, once held in respect even by Trinity, and now, at least, honored by all mankind.

But we are told that the authority of these great men on questions of constitutional law is overborne by the contrary opinion of a Mr. Burnell, who, in 1847, as chairman of an Assembly committee of seven, wrote a report for Trinity, in which he differed from Kent and Yates and Spencer and Tompkins, though not venturing to meet the arguments by which their conclusions are sustained. Trinity furnishes you with the pamphlet, and is evidently astonished that it does not impress you with a suitable feeling of awe. Certainly my friends will not claim it as a statement of the views of the committee at large, for, though in some form the seven signatures appear, it seems but two united with the chairman in affixing their names directly to the report; one signed a certificate below that he concurred in the *resolution*, omitting, however, to concur in the report; the remaining three were good natured enough to certify that, though prevented from attending the argument, they had come to a similar conclusion from examining certain papers. It would have been gratifying if they had left us a list of the then pamphlets of Trinity. We do not know Mr. Burnell, whose opinion is cited by our adversaries as so conclusive, and have no information in regard to him, except that he was a member of the Assembly of 1847; but we do not propose to abandon our case, though we entertain great respect for one

whom Trinity approaches with so profound a reverance. If our friends deem the opinions of men like Duer and Bradish and Ketchum and Clark entitled to no consideration as opposed to that of Mr. Burnell, we shall venture to fall back on the authority of James Kent, Ambrose Spencer, and their illustrious associates; fortified as it is by the decisions of the Court of Appeals and the Supreme Court of the Union, which, since the act of 1814, have settled these questions of constitutional law, in direct opposition to the expressed views of Mr. Burnell and Col. Troup.

The next claim of Trinity is that though the act of 1814 is unconstitutional, it should neither be repealed nor amended. In other words, the effect of the proposition is, that the legislature may enact but not repeal an unconstitutional law. We claim on the contrary that the unconstitutionality of an act is the strongest possible reason for its repeal. Such a law is necessarily unjust. It is powerless for good. Its tendency is evil and only evil continually. It remains upon the statute book not to instruct but to mislead. It gives to wrong the false semblance of right. It professes to be a law, when it is in truth no law. It fosters litigation, makes property uncertain and justice insecure. Trinity tells us the courts have clear power to declare it unconstitutional. Our answer is, the legislature have clear power to repeal it at once. Or they may so amend it as to obviate the objections and make the act constitutional. An unconstitutional statute does mischief because it drives men to law. Not many are willing to wage war in the courts against a fund of five millions. Litigation involves delay. With this law to give *color* to the claim of Trinity, half the corporators now living would be dead before the final decision. Again, each corporator must bring his own lawsuit. Shall a thousand corporators bring a thousand lawsuits? Trinity gives you notice that as many as are brought she will litigate, so long as you leave this law unrepealed. If we *fail* we must pay the costs of both sides, and the costs of both sides if we *succeed*. In the first case the expenses must be paid from our private means; in the last from the trust fund which belongs to us in common

with Trinity for nobler purposes than to be squandered in law. Repeal the act or amend it, and the excluded corporators are reinstated in all their rights, and this without delay, without cost to them, without cost to the fund. Suppose a faithless guardian under some specious pretence procures a statute, investing him with the property of an infant heir. When you ascertain the facts, will you leave that statute unrepealed to give color to his possession? Will you tell the child to grow to manhood, and go to law if he will to reclaim his own, which has been taken from him only under color of your authority?

But Trinity tells us she has *vested rights* under the law, and it will do you no good to repeal it, for the repealing law would be itself unconstitutional. We might, if we chose, retort her own argument: "If it is unconstitutional it can do you no harm, for the courts are open and will declare it void." But we shall put forth no such miserable pretence, but do what Trinity fails to do, meet the argument on its merits. Even if the act was constitutional, it could be lawfully repealed, for the rights it assumed to take from us it neither vested nor professed to vest in Trinity. It *found* her congregation corporators and electors and *left* them so. It divested our rights, but gave no new rights to them. We ask you to restore ours but not to take theirs from them. We do not seek and will not consent to confiscate any right, to disfranchise any voter. We ask you only to restore to us our own, which you took from us, but never gave to Trinity. If the law had been constitutional you *could* repeal it, because it vested no new rights; you *would* repeal it, because it invaded old rights. If, however, it had been what it was not, if it had assumed to vest in others what it tore from us, it would not avail Trinity. It is idle to talk of rights vested under an unconstitutional law. Such a law can vest no rights. It has no creative power. No man can set it up as a muniment of title. It is as powerless as a forged deed. It may cloud the rights it seeks to divest, but it can do no more. The first duty of the courts is to annul it, the first duty of the legislature to blot it out.

The next plea of Trinity is, that though the law was unconstitutional when enacted, it has since grown constitutional. The proposition, upon its face, is too preposterous for grave discussion. Which has changed, the law or the constitution? They stood in open conflict then. They stand in open conflict now. You can no more reconcile the law with the constitution, than you can make the opposing parts of a contradiction harmonize.

It is said that on a former occasion a few of these corporators sent memorials to the Assembly, asking an investigation, with a view to repeal; but that Trinity was shielded by Mr. Burnell's report, and the prayer of the memorialists was not then granted. The argument seems to be that as relief *was* not granted, it *cannot* be granted; that the power of the Legislature on this subject was then spent. Is legislative justice, because once denied, to be denied forever? The proposition is at war with the whole theory of our government. On no such plea can a claimant of justice be turned back from the capitol.

We come now to the last of the pleas of Trinity. According to her view the Legislature is barred of its power to do justice by the statute of limitations. What statute of limitations? When, where and by whom was it enacted? You do not find it in the constitution. You do not find it in the statute book. The Legislature, which makes laws, can repeal them, unless restrained by the constitution, but this unwritten law, which Trinity invokes, can hardly be repealed, for it has never been enacted. Who ever heard of a statute of limitations on the power of State legislation? Remember that for the purposes of this plea, Trinity concedes that these claimants were voters, corporators and beneficiaries under the charter; that their rights were confirmed by the act of '84, secured forever from invasion by the federal constitution; never forfeited, never released, suspended in 1814, by an unconstitutional law, and held in abeyance ever since, because you commanded them to refrain from exercising them. And now you are told you have been holding them out of their rights so long you must keep holding

them out forever; and this by virtue of a statute, which the counsel cannot find, for the reason that it never existed. Who ever heard of the justice of Legislatures and Parliaments being tied up by limitation acts? Who ever heard that while a wrong *continues*, under the sanction of a legislative act, it is *too late* to repeal the act and redress the wrong? Our complaint is not to Trinity, it is to the Legislature. It is *your* act by which we suffer. It is at *your* hands that we ask relief, and no continuance of injustice is an excuse for continuing it longer.

But if you had been tied up by the constitution to the rules you make for litigants in courts of law, it would not have availed Trinity in her struggle to uphold this act. Even waiving for the purpose of the argument the clear principle of law, that non-user shall not be taken as evidence of acquiescence, when the exercise of the right is suspended by statute, I can safely challenge my friends to search the laws of this state from the beginning of the government, to find a statute of limitation declaring a forfeiture of *a voter's franchise*, by non-user, whether for twenty or fifty years; and until such a statute is formed, their whole argument falls. At a former stage of the discussion I had occasion to allude to the fact that non-user of the right to vote never involved a forfeiture of the right. Since then I have been indebted to the kindness of my friend, Judge Wendell, for a reference to the case of The King *vs.* Wynn, in 2 Barnardistone, 391. In that case the freemen at large of the city of Chester asserted their right to vote for city aldermen, under a charter granted in the 16th year of the reign of Charles II. In 1689 they were, as they claimed, illegally divested of the right by a new charter granted by James II. They continued to complain more or less of the deprivation untill 1698; but after that time, down to 1733, there had been not only a continued non-user but an absolute acquiescence in their own disfranchisement for thirty-five years, as admitted by them and their counsel; yet it was held unanimously by the Court of King's Bench that the right was not barred by the acquiescence, and that a criminal information should issue to restore to the freemen the franchises of

which they had been unlawfully divested by the crown. Of the numerous cases to the same effect I need only allude to that cited by Lord Hardwicke, chief justice, in 7 Modern R., 198, and the case of The King *vs.* Jones, reported in 8 Modern R., 201, when it was held that non-user and acquiescence, in one instance for sixty years and in the other for a hundred and fifty years, did not bar the inhabitants or their descendants, even in a court of law, from reclaiming their chartered rights. There is another answer, if there was occasion to resort to it, equally fatal to the plea of Trinity. Even in the courts between private litigants statutes of limitation are uniformly held to be entirely inapplicable to cases of this class, arising on direct trusts as between the trustees and their *cestuis que trust.* But in this case all these questions made by Trinity are matters of idle speculation; as the testimony of Gov. Bradish and other witnesses for the claimants shows beyond all controversy that there has been no acquiescence; but through the entire period the act of exclusion and confiscation has been the constant subject of denunciation, complaint and remonstrance by the great body of the Episcopal inhabitants of New-York. Acquiescence is assent. We dissented, objected, protested. We asserted our rights. We denied the justice of the exclusion and the validity of the act. What more should we do to avoid penal forfeitures. Should we have resisted by force a public statute? Should we have gone to law with Trinity and the state? Surely the Episcopal communicants were not bound, at the peril of forfeiture, to commit an assault and battery either upon the Vestry or the legislature. But who are charged with acquiescence? You are bound in justice to grant relief unless *all* the claimants are barred. The Episcopal inhabitants of the city, then living and now surviving, are *cestuis que trust.* The Episcopalians thereafter "*to in habit*" the city, who have since been born, are *cestuis que trust.* When before has it been heard among men that the rights of a beneficiary, under a perpetual trust, could be barred before his birth, and by an unconstitutional law?

But failing in all these pleas, there is one more pretence of Trinity to which it is difficult to refer in terms of becoming respect. It is, that conceding that the Episcopal inhabitants of NewYork were by charter and by law beneficiaries and corporators, that they were unconstitutionally deprived of their rights, that they have never acquiesced in the deprivation, yet those of them who are either pew-holders or communicants in any Episcopal church of the city other than the four chapels of Trinity have thereby *forfeited* their right to vote and their interest in this trust fund. How? Why, by becoming members at once of two corporations. We put the question to our learned friends, how does that entail forfeiture? Does a man by becoming a corporator in two banks forfeit his stock in either or in both? My friend shakes his head; he does not mean that: well then the forfeiture is incurred by being a member of two religious organizations, though both are Episcopal, and each in harmony with the other for the promotion of a common object. Is it true then that if a communicant hires a pew in two churches, he loses each by paying for both? If he partakes the communion in two churches of his own faith, does he forfeit his right to partake it in either? If he attends a diocesan convention, does he forfeit his pew in Trinity and his right to commune at her altar? If besides being a communicant in an Episcopal church, he is also a member of an Episcopal Bible society, tract society, and missionary society, does he thereby forfeit his right to vote for vestrymen and churchwardens? Above all, does he lose his interest in a great religious trust fund, handed down through successive generations to him and his brethren, for the use of the church at large? We call upon our friends for some authority for the infliction of civil forfeitures on grounds like these. Do you find it in the constitution? No. In the laws? No. Where then? Nowhere. But they tell us that by the 28th canon of the English church, and the 13th canon of the Episcopal church, there is an ecclesiastical regulation that a clergyman cannot be compelled against his will to administer the sacrament to persons not claiming to be members of his

parish. But where is the forfeiture? We do not find it in the canon. Besides, the matter in issue is not whether Dr. Berrian could be compelled to administer the sacrament to his Episcopal brethren. They make no such petition. They simply ask that Trinity Vestry may not be permitted to divest them of their civil rights, secured by law and neither forfeited nor released.

One of my learned friends has even ventured to suggest that Trinity might, by *her own act*, have forfeited the rights of her corporators by changing the bounds of her parish, thus leaving them the agreeable alternative to sink or swim at their election. It would be a novel doctrine that Trinity could, by her own act, subject a third party to forfeiture. But no matter by whom done, an act like this entails no forfeiture. This word "*parish*" is the eternal theme of Trinity. She has never yet settled exactly what it means. She will not define it herself, and will not allow us to define it for her. She has never changed her parish bounds—and if we wish to ascertain them, we find by the charter that they embrace the whole city of New-York. She puts her chapels where she will. Her two noblest churches are nearly three miles apart. The episcopal brethren she seeks to exclude are within the bounds of her parish as fixed by her charter, and unaltered by law. Even upon her own showing she is without a shadow of right to disfranchise them as voters or despoil them as beneficiaries.

After thus reviewing the grounds on which Trinity rests her claim to perpetuate this injustice which she deems no injustice, we can more readily appreciate the lofty tone she assumes in rebuking the effrontery of the legislature. She thought she had done with you when she obtained through your aid the confiscation act of 1814. It is not strange that from that time she grew rich and strong and defiant. She supposed she had relieved herself from responsibility by getting rid of the bulk of her corporators. She was taken by surprise at this unexpected claim of a legislative right to investigate public grievances committed under color of State laws. She is now beginning to

learn that even she is subject to the authority of government, and that even against Trinity 7000 men may in the end obtain a hearing when they appeal to the legislature for protection and for justice.

She complains in bitter terms of this investigation, forgetting that what the corporators have been struggling so long to accomplish has been attainted at last only through her own maladministration. But if she had frankly admitted the truth, and the whole truth, when you gave her an opportunity to testify in her own behalf, she would at least have occupied a more elevated position. The questions addressed to her by the Senate were plain, simple and easy to be understood. They asked for answers. They asked for the truth. She admits in her second communication that she did not in the first disclose it, and her apology is that she did not intend to. Pursuing the policy of a close corporation, she evaded the truth by a quibble, and obtained the benefit of untruth, without incurring either its guilt or its odium. In her secular relations, and in her dealings with the government, she seems to disclaim the ethics, both of the church and the law, and very properly keeps her conscience clear, by avoiding the *suggestio falsi*, and contenting herself with the *suppressio veri*, when it serves the purpose equally well. By a device no less ingenious, yet probably equally free from censure, so far as intentional wrong is concerned, she makes *gifts* for pious uses, in obedience to the provisions of the trust; and then takes *mortgages* for them, to the end that the scripture may be fulfilled, and that now, as of old, the giver be more blest than the receiver.

She complains that the testimony received prior to your first report was taken against her *ex parte*. Here, again, we have an illustration of the peculiar views of a close corporation. You held your session at New-York for her accommodation. You gave her written notice of the time and place of your meeting, and asked her aid in making the investigation. She gave a written admission of notice to her Vestry, signed at her corporation office, attested by her own comptroller. She chose not

to appear, and yet she now coolly rebukes the Senate for taking testimony against her *ex parte*.

She complains of the witnesses against her. Who were those witnesses? They were thirty-three in number. Eleven of them were business men of character and standing, who were called to prove facts in relation to her property, which are entirely uncontradicted by her own answering testimony. All the rest were churchmen of New-York. Ten of them were laymen, some from her own, some from other congregations, all gentlemen of the highest character; embracing men of eminence as churchmen and philanthropists, as statesmen and civilians. Nine of the witnesses were Rectors of other Episcopal Churches in New-York, embracing clergymen who have exalted the character not only of the Episcopal church, but of the American pulpit, both at home and abroad. One of the witnesses against her was her own comptroller. Three of them had received the endorsement of her corporators as vestrymen, two of them consenting, and the third refusing to be sworn, when called on the part of the State, but afterwards coming twice as a witness to Albany when the Vestry needed his aid. You found the truth locked up, but Trinity, it seems, held the key. The three remaining witnesses were clergymen of Trinity Church. These were all; and these are the men whom, through her representatives, she now maligns. She is unjust to her church and her faith, when she would have you discredit her own clergy and office bearers as unworthy of belief, and when she stands before a Senate committee to denounce such laymen as Luther Bradish, Robert B. Minturn, Stephen Cambreling and Frederic S. Winston as church robbers and plunderers, and to stigmatise divines like Taylor and Tyng and Howland as rapacious and covetous slanderers, on oath.

But there was another witness against Trinity—an *ex parte* witness—whom even she dare not impeach. It was Trinity herself, testifying through her own Vestry, and recording her own condemnation. If her *ex parte* testimony is to be credited,

her administration of this trust fund from 1814 down, in the light of the surrounding facts, has been one continued maladministration.

When these facts were developed by the report of your committee, the Senate inquired what action you recommended. It seemed that you had been originally required merely to investigate and not to recommend. The Senate promptly invested you with full powers. Then Trinity changed her lofty tone of independence and defiance, and condescended to appear before you. You gave her the advantage of a long, laborious and patient hearing. She has had the benefit of all the testimony she ventured to offer, including legends, hearsay and tradition. She did not give you access to her ample vault and the records it contained, but she has unlocked it herself. She has withheld what she pleased and produced what she pleased.

And so with her witnesses. She summoned whom she would, and whom she would she withheld. She saw fit to examine sixteen in all. Her Rector, Dr. Berrian, it was of course safe to produce. He had already committed himself, if public journals are reliable, in regard to the merits of the administration of this great trust by himself and his Vestrymen, when at the opening of Trinity Chapel, on the 22d of April, in speaking of the property of Trinity, he announced to the audience that it was "*a great trust* which had been administered with an uprightness, liberality and wisdom, which, even in this country, had never been surpassed." It was clear, then, that if anything was wrong on the part of Trinity, it was unknown to the Rector, and no hazard was incurred by putting him on the stand. It was thought prudent also to call six others of the nine clergymen of Trinity. This being a question affecting the temporalities of the church, and their labors having been mainly engrossed in promoting its spiritual welfare, Trinity judged wisely, as they could of course do but little harm to the corporation, even if subjected to cross-examination. But with the Vestry who had charge of its secular interests, a well-wisher

of Trinity would advise more caution. Of the whole twenty-two, churchwardens included, six only were found, whom it was deemed prudent to produce. With regard to the testimony of these clergymen and Vestrymen, the judiciousness of the selection is apparent, when you consider how little they saw, and how much they heard. Their knowledge of facts was limited, but their faith in the wisdom and purity of Trinity was unbounded. The counsel also recalled and cross-examined the Rev. Mr. Pound, but were so little satisfied with his testimony that I do not understand even him to be excepted from the class so bitterly denounced as avaricious conspirators against the peace and wealth of Trinity. Where were the other sixteen Vestrymen? They were, perhaps, by some unfortunate coincidence, detained by other simultaneous engagements in this hour of trial and of peril to Trinity. Probably as an apology for their non-production, two Reverend Bishops were summoned to the stand. These gentlemen, of course, could not refuse their attendance. It was, perhaps, supposed by those who had in charge the secular interests of Trinity, that the exalted character and deserved eminence of those honored prelates would be regarded as furnishing, even by their attendance as witnesses, a *quasi* endorsement of Trinity, as at least ecclesiastically orthodox. As Bishop Potter had only recently removed to New-York, he could not speak to any extent from personal knowledge of the secular affairs of Trinity, and with the ingenuous frankness which all who know him have learned to honor and respect, somewhat aided perhaps by a cross-examination, he stated to the committee why it was that he was compelled to rely mainly upon hearsay and inference in regard to the facts as to which he was interrogated, and that he had no control whatever over the secular concerns of the corporation. Surely my learned friends will not seriously contend that a contribution of $1600, from a fund of five millions, toward the support of the Bishopric of her own diocese, was such extravagant liberality that Trinity need call him to prove her munificence to the church at large. Bishop De Lancey, if I rightly understand the effect of his

testimony, seems to have been called mainly for the purpose of proving that he knew nothing material as to the temporalities of Trinity, except that to Geneva College, with which he is honorably connected. She had promised $50,000—a promise which to this time she has failed to fulfill, though she makes for the present an allowance of $3000 a year, thus keeping that institution in the condition of the New-York church, which my friend Mr. Ogden told us was "*dependent, and properly de-*"*pendent on Trinity.*"

What then do these sixteen witnesses prove? Do they meet the great facts established against Trinity by the evidence? Do they explain or excuse her high-handed disfranchisement of the great Episcopal body of New-York? Do they show on what pretence of right she procured the confiscation of the chartered interests of thousands of corporators and beneficiaries in a great trust fund? Do they explain the revolution in her policy which followed hard at the heel of that memorable act of exclusion? Do they show how it is that she has blasted the hopes, and disregarded the promises made by her agent to the council of revision? Do they explain her reluctance to disclose, even at the call of government, the amount of her property and the names of her corporators? Do they show how it is that a fund of five millions in her hands yields only an annual income of less than two per cent? Do they explain her extravagant expenditures in magnificent edifices against the remonstrances even of her own leading Vestrymen? Do they explain her permitting feeble churches of her faith to starve at her side, and refusing them even the coldest gifts of charity? Do they contradict or excuse her refusal to aid even private munificence in the erection of churches for the poor? *Do they make any apology for the meagre amount of her contributions in aid of the country churches?* Do they furnish any explanation of her cold and grudging bounty in dispensing this trust fund, to aid the Episcopal Church at large in the State of New-York? Do they show why she leaves one-fifth even of her city and "parish," with its half million of souls, without an Episcopal church? Do they explain how it is that with charities so stinted as she herself admits, there has

been an increasing debt and a heavy annual deficit for each of the last ten years, as disclosed by her own vestryman, General Dix? Do they show why it is that, under this new system, she has become at once a money borrower and money lender? Do they explain how it is that she converts even her gifts into loans, and exacts mortgages for religious charities? Do they furnish any apology for her strange policy of subterfuge, concealment and evasion, in matters which should be open as day to the church and to the world? Do they explain the fact that a trust for the benefit of all the Episcopal inhabitants of New-York has fallen into the hands of 305 men; that Trinity can only muster the 305 by counting together the living and the dead; that even the living do not vote for the administrators of a fund of five millions, but from year to year vestrymen are permitted to elect and reëlect themselves? Do they explain the strange fact, revealed by Trinity herself, that, aside from women and children, she can count, under her present policy, in all her churches, but ninety-two communicants, embracing her clergy and her vestry, if not the living and the dead?

In view of these facts, established by overwhelming evidence, we appeal to you to restore to the churchmen of New-York the rights of which your predecessors divested them on the petition of Trinity. Seven thousand Episcopalians appeal to you for justice. They produce the muniments of their title. They show that they are disfranchished, and their property confiscated, under color of a law which the constitution condemns. They show that the act of exclusion has not only cloven down their rights, but has impaired the progress of the church at large, and has even blasted the prospects of Trinity herself. I am aware that you are engaged in no agreeable duty. You will be assailed hereafter as you have been heretofore. The weapons of corporate warfare will not be permitted to rust unused. But if the Legislature, by an act of simple justice, shall forfeit the favor and smiles of Trinity, you will at least have the consolation of knowing that you have restored this great fund to the noble purposes of the trust, that you

have relieved thousands upon thousands from the pressure of unmerited wrong, that you have restored the prosperity and harmony of a great religious denomination, and that you have performed a noble act, at once of justice and beneficence, not only for the present but for succeeding generations.